IN THE HIGH COURT OF HIMACHAL PRADESH AT SHIMLA

RSA No. 287 of 2005

Date of Decision: 13th September, 2007

Braham Dass and others — Appellants

Versus

Bal Krishan and others — Respondents

Coram

The Hon'ble Mr. Justice Sanjay Karol,J.

Whether approved for reporting[1]?

For the appellants: Mr.Bhuvnesh Sharma, Advocate.

For the respondents: Mr.Ajay Sharma, Advocate, for respondents No.1,2 and 4.

Sanjay Karol, J. (Oral)

The present appeal arises out of judgment and decree passed by District Judge, Una, on 9.3.2005 in Civil Appeal No. 9/1996, titled as Braham Dass and others vs. Bal Krishan and others, upholding the judgment and decree dated 29.1.1996 passed by Sub Judge, Ist Class, Court No.1, Amb, district Judge, in Civil Suit No. 76 of 1989.

The appellants- plaintiffs filed a suit for declaration and injunction against the respondents-defendants seeking a decree of declaration to the effect that they alongwith defendants No.5 to 11 are the exclusive owners of the suit property and defendants No.1 to 4 be restrained from interfering with their possession.

Whether the reporters of Local Papers are allowed to see the Judgment?

The admitted facts are that the plaintiffs and defendants No.5 to 11 are on the one side and contesting defendants No.1 to 4 are on the other side and are having common ancestors, who were jointly holding land in two villages, namely, Gindpur, Tehsil Amb, District Una and Swana, Tehsil Dehra, District Kangra, H.P. In the revenue record as on the date of filing of the suit the land continues to be jointly held by the parties. In relation to consolidation proceedings initiated by the State of H.P. in the year 1986-87 whereby the land was partitioned, there was a dispute between the plaintiffs and contesting defendants and the litigation with regard to the same culminated in passing of the order dated 5.10.2004, by this Court in CWP No.1387 of 2005 and also order dated 2.7.2007in LPA No. 47 of 2004 whereby the consolidation proceedings were quashed.

The present suit was filed on the basis of rights in favour of the defendants flowing from the deed of exchange of the year 1880-1890 (Ex.P1) and also dated 13.6.1913 (30.6.1913) (Ext.PW-1/A) whereby the land of the joint holding was exchanged and predecessor-in-interest of the plaintiffs were entitled to own and possess the entire land in Village Gindpur, Tehsil Amb, District Una and predecessor-in-interest of contesting defendants were entitled to own and possess the entire land in Village Swana, Tehsil Dehra, District Kangra.

The trial Court, framed the issues, recorded the evidence and after appreciating the material on record dismissed the suit vide judgment and decree dated 29.1.1996 on the ground that no evidence is on record to show implementation of the deed of exchange. The plaintiffs assailed the same before the District Judge, Una, who also upheld the finding of the trial court and dismissed the appeal, inter alia, holding that from the evidence adduced by the plaintiff himself it was clear that parties were holding the land jointly and the alleged deed of exchange was never reflected in the revenue record.

The parties were repeatedly enforcing their rights and had also assailed the orders passed by the Settlement Officer (Consolidation), which were finally set aside by this Court in writ proceedings. The Court further held that during the course of the settlement proceedings, the Settlement Officer in fact visited the spot and ascertained possession and ownership of the parties. Both the Courts below have concurrently held that from Ex.PW-1/A, it cannot be ascertained which of the land was agreed to have been exchanged by the predecessor-in-interests of the parties. There is no specific mention of Khasra number. The entry in the revenue record was not got effected pursuant to the Ext.P-1 deed of exchange by way of mutation. Both the Courts below have come to the conclusion that there is no evidence on record to establish that exchange of land ever took place between the ancestors of the parties. I have seen the summoned record and convinced that the findings are based on cogent material and are on correct appreciation of facts and evidence. There are concurrent finding of fact. I am of the view that no question of law much less any substantial question of law arises for consideration in the present appeal. The same is accordingly dismissed. All the Misc. applications are also dismissed.

13th September, 2007 (Sanjay Karol),
(C) Judge